

November 19th, 2008
NOTICE OF REGULAR MEETING AND PUBLIC HEARING MEETING OF THE
BENTON COUNTY PLANNING BOARD

WHEN: November 19, 2008
TIME: 5:30 p.m. The Benton County Planning Board will meet to receive Public Comments on any of the proposed projects on the agenda.
PLACE: Benton County Administration Building, 215 East Central Avenue
Quorum Courtroom, 3rd Floor (Suite 324), Bentonville, AR 72712

MINUTES FOR REGULAR PUBLIC HEARING

1. Call to Order

2. Roll Call

The following Benton County Planning Board members were present: Scott Borman, Mark Curtis, Mark Gray, Caleb Henry, Bill Kneebone, Tim Sorey, and Heath Ward.

The following Benton County Planning Office staff members were present: Ashley Pope, Ronette Bachert and Teresa Sidwell.

3. Disposition of the Minutes of October 1, 2008 technical advisory committee meeting and the October 15, 2008 public hearing meeting as distributed.

Mr. Kneebone made a motion to accept the meeting minutes as distributed; Mr. Borman seconded the motion.

Mr. Borman, Mr. Curtis, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward all voted in favor of the motion; the motion was passed.

4. Reports of Planning Board members

There were no reports from any of the Board members.

5. Public Comment

Tony Miltich of 9679 E. High Meadows Drive stated that he was present to comment on the Whispering Woods project. He commented that he would like to point out to the Board that although he painted a grim and ugly

picture of the stormwater maintenance for the project at the last public hearing, he wanted to make the Board aware that stormwater measures had been taken and considerable improvements made. He added that he is an audiologist and had made some suggestions to the developer in regards to sound barriers.

Andrew Huntsinger of the Slinkard Law Firm represented Kim and Richard Gerhardt, owners of Lot 6 immediately north of the proposed Whispering Woods Community Center. He stated that his clients had concerns about the proper maintenance and use of the toilet facilities next to their property. He added concerns about the maintenance of the natural buffer area, the removal of gazebos and the sand volleyball court, the enforcement of parking and access, and the expansion of the development. He stated that the Board mandated that the developer obtain an easement from the property owner to the south for the driveway that traverses both properties but no such easement has been obtained. He added that his clients do not believe that an off-site community center for a subdivision is compatible with the neighboring property uses. He stated that these feelings were shared by Mr. and Mrs. Lewis (property owners immediately to the south) and were expressed in a letter sent to the Board.

Nicole Chervenyak of 9922 Coose Bay Boulevard stated that she was present to comment on the Whispering Woods Community Center. She stated that she sold real estate on the lake and was in favor of the community center. She added that she was a neighbor to the community center and lived there full time. She commented that she felt that the other neighbors were in favor of the project except for the adjacent property owners. She stated that Lakeway Estates has 35 lots and only 6 parking spaces but they do not seem to have a problem with parking. She added that she felt the developer was trying to work with everyone's concerns.

Roger Sutter of 9919 E. High Meadows stated that he lived across road from the Whispering Woods project and that he approves of the development. He added that he runs a wholesale business from his home with a sign for directions. He stated that he thought the project would enhance the area.

Tom Skipper, who sold property to the Gerhardts, stated that he was present to comment on the Whispering Woods project. He added that the property owners that were most affected were the ones that live next door. He stated that Ms. Spivey's attorney contacted his broker to suggest that he not mention his relationship with his broker. He added that he felt that it was his duty to assist his client and friend in need. He commented that the remarks stated in a letter by Ms. Spivey's attorney dated November 14, 2008 would have the Board believe that the move to construct a community center was

somewhat altruistic, but that it is obvious that this decision was made to enhance the sale of the lots in the Whispering Woods subdivision. He added that those in the real estate market are attempting to get creative with marketing but not to the detriment of others. He stated that it would be common courtesy to approach neighbors that would be affected by changes made to the property and questioned the need for four large gazebo-type pavilions if the developers did not foresee a need for large family gatherings. He commented that the Gerhardt's dream of owning a property on the lake has been changed. He added that the development was done without the Gerhardt's knowledge by a developer that overlooked Benton County regulations.

Lane Gurel of Rogers stated that he was the developer of the Lakeway subdivision and was present to comment on the Whispering Woods project. He added that he was strongly against development prior to approval of the Planning Board. He added that he wanted to clarify some things about the Lakeway subdivision since the Whispering Woods subdivision had been compared to the Lakeway subdivision several times. He commented that there is a park in the Lakeway subdivision and that the purpose of the park was to provide off-street parking per the Army Corps of Engineers requirements when community docks are present. He said that the park has 16 parking spaces, which is more than the number of slips in the community dock. He stated that the subdivision has 38 lots with plans for three community docks. He added that there are lakefront lots that do not need parking spaces unlike the Whispering Woods subdivision. He pointed out that the park is within the subdivision and that the residents of the subdivision do not need to travel outside the subdivision to get to the park.

6. **Old Business:**

A. Large Scale Development - **Whispering Woods Community Center** - 10142 Coose Bay Boulevard, Avoca

- The hours of operation shall be limited to 9:00 am to 9:00 pm daily.
- The applicant shall submit a certification from an engineer that the installation of the compost toilet has been completed properly.
- Operation and maintenance logs for the compost toilet shall be open for public view upon request.
- On-site lighting shall be directed away from the Gerhardt property (adjacent property) and shall be operated on timers to coincide with the hours of operation. A lighting shield was recommended by the applicant.
- The landscaping buffers shall be maintained in good condition. Any dead trees or foliage in the landscaping buffers shall be promptly replaced.

- The loblolly pine trees planted in the landscaping buffer shall be installed with a minimum caliper of 4 inches.
- Staff asks the applicant to consider removal of the three installed gazebos from the premises.
- Staff asks the applicant to consider removal of the sand volleyball court from the premises.
- The applicant shall obtain an easement from the adjacent property owner to the south for the driveway that traverses both properties.
- The applicant shall maintain in good condition the fencing and gate to limit access to the site.
- No more than eight vehicles shall be parked on the site at one time.
- No boats, recreational vehicles, trailers, or other accessory vehicles shall be parked on-site at any time.
- Loud noises shall be prohibited.
- The lot split shall be recorded.

Bill Watkins and Jennifer Gray of the Watkins Law Office represented the proposed large scale development.

Mr. Watkins responded to comments made by Mr. Huntsinger concerning the waste disposal system that will be in place on the property. He stated that the waste disposal system is not a port-a-potty but a fairly expensive waterless composting toilet. He added that maintenance of the system will be addressed with the P.O.A. and that covenants will require record-keeping and qualified maintenance of the facility. He stated that the property owners' association will be responsible for the common area. He commented that Staff had requested that some of the gazebos and volleyball court be removed but that the requests were not requirements. Mr. Watkins stated that the easements are in place and that there is legal access to the property that was in place four years before Mr. Lewis purchased his property. He added that the owner of the property will be Coose Bay Investments, LLC (the owners of lots in the subdivision) and the easements are granted to the owners of the property. The members of the LLC shall be the owners of lots in the subdivision plus the Lewis and Gerhardt families, should they choose to join at no cost. He stated that the project will not be a public facility and that access will be regulated.

Mr. Watkins stated that although this is the third public hearing on this matter, the Lewis family has chosen not to attend and have proven that they were not interested in participating after proper notice. He suggested that

the only reason the Lewises are participating at this late stage is at the request of the Gerhardts. He stated that the Lewis' letter contains information that is disputable. He added that the letter stated that Mr. Lewis didn't think the easement was for the purpose of giving a twenty lot subdivision lake access. Mr. Watkins commented that the easement existed before the Lewis' owned their property and didn't know how he could judge the intention of the parties at the time the easement was granted. He added that Mr. Lewis' property is well buffered by vegetation. He stated that his client has already apologized for failing to recognize that she should have come before the Board before anything had been constructed.

Mr. Watkins commented that many of the points in Mr. Huntsinger's letter are inaccurate and misleading. He added that Ms. Spivey has done everything she could to comply, including 24 changes or additions as requested by the Planning Board. He stated that his office and his client have tried to secure an agreement with the Gerhardts. He commented that Mr. Skipper had represented the Gerhardts in their failed attempt to buy the community center property. He added that the community center would have limited and occasional use with the exception of some holidays. He stated that since the amenity is detached from the subdivision it may be a less comfortable decision than if it had been made part of the subdivision.

Mr. Ward asked for Staff comments. Ms. Pope stated that before she summarized the Staff recommendations for approval she wanted to point out that Staff recommended removal of some of the gazebos and the sand volleyball court but that the suggestion was not entertained by the TAC committee. She added that Staff's justification for those requests was to lessen the potential impact of the project. She stated that Staff had concerns about the driveway on the south side of the property that traverses two lots; she stated that the applicant had informed Staff that there was a recorded easement for the driveway. Ms. Pope stated that at first Staff had recommended 8 parking spaces on the site but the TAC committee recommended 20. She added that Staff understands that this is a difficult decision and recommends approval with the following stipulations:

- The hours of operation shall be limited to 9:00 am to 9:00 pm daily.
- The applicant shall submit a certification from an engineer that the installation of the compost toilet has been completed properly.
- Operation and maintenance logs for the compost toilet shall be open for public view upon request.
- On-site lighting shall be directed away from the Gerhardt property (adjacent property) and shall be operated on timers to coincide with the hours of operation. A lighting shield was recommended by the applicant.
- The landscaping buffers shall be maintained in good condition. Any dead trees or foliage in the landscaping buffers shall be promptly replaced.

- The loblolly pine trees planted in the landscaping buffer shall be installed with a minimum caliper of 4 inches.
- The applicant shall obtain an easement from the adjacent property owner to the south for the driveway that traverses both properties.
- The applicant shall maintain in good condition the fencing and gate to limit access to the site.
- No more than twenty vehicles shall be parked on the site at one time.
- No boats, recreational vehicles, trailers, or other accessory vehicles shall be parked on-site at any time.
- Loud noises shall be prohibited.
- The lot split shall be recorded.
- Submit POA and LLC documents to Staff.

Mr. Curtis asked who would be members of the LLC. Mr. Watkins stated that the members of the LLC would consist of Mr. Gerhardt and his successors, Mr. Lewis and his successors, and the property owners of Whispering Woods subdivision. Mr. Curtis asked if there were owners of slips at the boat docks that were not property owners in the subdivision. Mr. Watkins replied that there were boat dock slip owners that were not property owners in the subdivision but that would be a matter to bring before the Corps of Engineers. Mr. Sorey asked about the number of slips at the boat docks; Mr. Watkins replied that there were a total of 12 slips: a four-stall dock and an eight-stall dock. He added that the slips were owned by family and friends. Mr. Sorey asked if access to the docks was through the property; Mr. Watkins replied that access to the docks is through the property.

Mr. Ward asked how long Ms. Spivey had been in the development business; Mr. Watkins replied that this was her first attempt at it. Mr. Ward asked at what point the attempt was made to create the community center; Mr. Watkins replied that it was originally intended to be a single family residence. He added that it was difficult to pin an exact date on it because it was an evolving process. Mr. Ward stated that he had an application filed by Mr. Ritchie that was dated January 24, 2007. He added that on the application the proposed use was for a recreational area and the project name was Whispering Woods. Mr. Watkins stated that he was not sure of what Mr. Ritchie had put on the application but the original intent was to use the property for private use.

Mr. Ward asked Mr. Watkins to explain the statement in paragraph three of his letter asserting "the Gerhardtts are absentee landowners." Mr. Ward stated that if they are taxpayers in Benton County it doesn't lessen their right to oppose this project or make their opinion worth any less. Mr. Watkins stated that it doesn't affect their rights but it does affect the impact of this property if they are rarely there.

Mr. Sorey questioned the rights of the primary access easement and the legal use of the easement by the LLC or the property owners in the subdivision. He added that it wasn't necessarily a Board issue as it was a legal issue based on the legal document. Mr. Watkins was in agreement with Mr. Sorey's analysis. Mr. Sorey added that there was another issue with an access that crosses the south property line; he commented that there may not be a need for the easement to exist if only for the benefit of the two property owners. Mr. Sorey added that the two property owners surely wouldn't want the traffic from the development and he recommended that the access be fenced off. He stated that there is fencing on the south property line that stops near the sand volleyball court. He added that he didn't know why that easement needed to continue to exist unless the property owner to the south needed to use it for access to the lake. Mr. Watkins stated that if this were the case they could give them a key to a gate. Mr. Sorey stated that he felt the driveway should be fenced off.

Mr. Sorey commented that the screening that has been provided on the plans along the Gerhardt common property line may not be providing adequate screening. He added that the plantings could be oriented better, the rail fence will not provide any screening, and the hollies will not provide much screening especially with the spacing suggested. Mr. Watkins pointed out that there will also be walls near the basketball court and the gazebos that will provide further screening. Ms. Pope suggested that the landscape buffer be professionally placed. Mr. Sorey felt that that would be appropriate.

Mr. Sorey stated that there was also a lot split that needed to be recorded. Ms. Pope stated that she would have to investigate that fact.

- The hours of operation shall be limited to 9:00 am to 9:00 pm daily.
- The applicant shall submit a certification from an engineer that the installation of the composting toilet has been completed properly.
- Operation and maintenance logs for the composting toilet shall be open for public view upon request.
- On-site lighting shall be directed away from the Gerhardt property (adjacent property) and shall be operated on timers to coincide with the

hours of operation. A lighting shield was recommended by the applicant.

- The landscaping buffers shall be maintained in good condition. Any dead trees or foliage in the landscaping buffers shall be promptly replaced.
- The loblolly pine trees planted in the landscaping buffer shall be installed with a minimum caliper of 4 inches.
- The applicant shall obtain an easement from the adjacent property owner to the south for the driveway that traverses both properties.
- The applicant shall maintain in good condition the fencing and gate to limit access to the site.
- No more than twenty vehicles shall be parked on the site at one time.
- No boats, recreational vehicles, trailers, or other accessory vehicles shall be parked on-site at any time.
- Loud noises shall be prohibited.
- The lot split shall be recorded.
- Submit POA and LLC documents to Staff.
- Fence off the driveway on the south side of the property.
- Landscape buffer along the Gerhardt common property line must be professionally placed for screening.

Mr. Borman made a motion to approve the project pending the stipulations. Mr. Sorey seconded the motion.

Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, and Mr. Sorey voted in favor of the motion; Mr. Curtis and Mr. Ward voted against the motion, the motion was passed.

7. New Business:

- B. Large Scale Development Expansion– **Beaver Lake Fire Department** – 16035 Cypress Ln., Rogers
 - The easement obtained from the Beaver Shores POA must be shown on the site plan.
 - Show a disclaimer on the site plan stating that it is not a survey.

- Submit a copy of the existing survey to Staff.
- The applicant shall provide stormwater and erosion control documentation.

The project was represented by Michael McFadden of the Beaver Lake Fire Department Board of Directors.

Ms. Pope reiterated the stipulations from the November TAC meeting and stated that all stipulations had been met; Mr. McFadden agreed that all stipulations had been met. Mr. Curtis stated that the site plan did not show any parking; Mr. McFadden stated that there was an existing paved apron that would be used for parking with overflow parking across the street.

Mr. Borman made a motion to approve the project. Mr. Kneebone seconded the motion.

Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; Mr. Curtis abstained from the motion, the motion was passed.

C. Large Scale Development – **Benton Washington Regional Public Water Authority Water Storage Tank** – 11632 West Hwy. 72, Centerton

- Provide a concrete driveway apron to the edge of the right-of-way.
- A copy of the AHTD permit for the driveway shall be submitted to Staff.
- Provide a summary of the geotechnical findings to Staff.
- The applicant shall provide a service letter from Carroll Electric.
- The applicant has agreed to surround the site with silt fencing.

Mr. Borman excused himself from the remaining portion of the meeting due to a conflict of interest with the last two projects.

Mr. Stewart Noland of Crist Engineering represented the proposed large scale development.

Ms. Pope stated all stipulations had been met for the project. David Hill, Justice of the Peace for District 9, asked Mr. Noland if an environmental impact study had been done and the purpose of the water tower. Mr. Noland responded that an environmental impact study has not been done and the point of the water tower is to provide water storage for the users of the Benton Washington Regional Public Water Authority. Justice Hill asked if there was already a water storage tank across the road from the proposed

project. Mr. Noland agreed that there was a tank for an individual system but the proposed project was for a system that wholesales to that system. He added that the proposed system is much larger in magnitude and will provide for all the systems. Mr. Noland stated that the proposed system would not be connected hydraulically to the tank across the road but is connected through a meter.

Mr. Kneebone made a motion to approve the project. Mr. Curtis seconded the motion.

Mr. Curtis, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward voted in favor of the motion; Mr. Borman abstained from the vote. The motion was passed.

C. Large Scale Development Preconstruction Activity - **Centerton Quarry**
- 15271 Burgin Valley Rd., Centerton

- Submit a time line for the completion of the paving of Bethlehem Road.
- The applicant agrees to pave ¼ mile of Bethlehem Road with 3 inches of asphalt to a width of 24 feet with proper curbs and signage in accordance with the Benton County Road Department specifications.
- Road access for all affected property owners shall be shown on a site plan.
- Notification of the improvements shall be made to property owners on Bethlehem Road.

The project was represented by Terry Sossong of the Rogers Group.

Mr. Sossong handed out documents to the Board showing an overview of Bethlehem Road and the intersection of Highway 102 coming out to the quarry site marked with a yellow pin. He added that Map B focuses a little more on the first area that is proposed to be paved, ¾ of the way over there will be a mark in black denoting the area that represents approximately ¼ mile and the driveways that would be covered as a result of the paving. He stated that Map C shows what the intersection would look like. He added that the home owner at that intersection would be given the option of how they would like to access the intersection from their property.

Mr. Sorey asked for clarification on the details of the proposal. Ms. Pope reiterated the discussion from the TAC meeting for Mr. Sorey. Mr. Sorey asked if ¼ mile of Bethlehem Road would be paved by September of 2009 and would be completed after the red dirt removal. Mr. Sossong stated that the project would proceed depending on how the Highway 102 project proceeded. He added that the 3 inches of asphalt would be able to withstand

the traffic and that they would preclude the potential for dust and disturbance if the opportunity comes to pave it before all of the dirt is hauled out from the project.

Mr. Ward asked if the intersection at Highway 102 would also be improved with a turn lane. Mr. Sossong replied that ultimately they would put a turn lane there and the drainage in that area would be improved significantly because of the improvements.

Mr. Sorey inquired about the two small parcels that would be created due to the improvement at the Burgin Valley intersection that would be disconnected from the project site. Mr. Sossong stated that they had no intentions of selling the segmented pieces of property created by the improvement. He added that an adjoining land owner would not give part of his property for a 50 foot right-of-way to the County so Rogers Group gave that property for the road improvement. Mr. Sossong asked if the small parcels created by the road improvements caused any problems in regard to land splitting from a legal standpoint; Mr. Sorey stated that at some point the right-of-way would revert back to the adjacent property owners and a fence would go down the old Burgin Valley Road.

Mr. Sorey asked if the turn lane would be done at a separate time in the future; Mr. Sossong stated that the turn lane would be completed when the rest of the road was paved. Mr. Sorey stated that he likes the proposal but a road plan needs to be submitted to the Board and the Road Department before approval of the construction of the road; he added that an engineer would need to be hired and survey work done because the church parking lot situation may not be resolved with paving and drainage alone. He commented that people like to drive across the parking lot as a short cut and a green space may be suggested between the road and the church parking lot to resolve the problem.

Mr. Curtis stated that it was a reasonable compromise to help the residents and the county in paving the road and fixing the intersection, although he voted against it originally. Mr. Ward agreed and added that safety issues were also addressed.

Mr. Gray asked if any survey work had been done in preparation for the road redesign. Mr. Sossong stated that no survey work had been done at this point. Mr. Gray asked if the tracts created by the road redesign would need a tract split. Ms. Pope stated that in the case of road construction, tract split rules could be a plat of the final tracts.

- The applicant must coordinate with and have the approval of the Road Department.
- Notification of the improvements shall be made to property owners on Bethlehem and Burgin Valley Roads.

- Engineered drawings of proposed road construction.
- Provide satisfactory access for all properties affected by the road redesign and paving.
- Documentation and survey of the tracts created by the road redesign.

Mr. Kneebone made a motion to approve the project subject to the outstanding stipulations; Mr. Sorey seconded the motion.

Mr. Curtis, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; Mr. Borman abstained. The motion was passed.

Discussion of the Centerton Quarry project was concluded.

Ms. Pope commented that Mr. Borman had brought up changing the Planning Board meeting time from 5:30 to an earlier time. Mr. Sorey stated that in the past comments were made that people in the county would not have sufficient time to get to the meeting after normal working hours. Mr. Kneebone stated that comments were also made that if citizens wanted to attend the meeting, they would make the effort to arrive at an earlier time.

Mr. Kneebone made a motion to change the time of the Planning Board meetings; Mr. Borman seconded the motion.

Mr. Borman, Mr. Curtis and Mr. Kneebone voted in favor of the motion; Mr. Gray, Mr. Henry, Mr. Sorey and Mr. Ward voted against the motion. The motion was denied.

8. Adjournment

The meeting was adjourned at 6:45 pm.

Respectfully submitted,

Ashley E. Pope

Planning Director